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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

against

STATE OF LOUISIANA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

APPENDIX TO JURISDICTIONAL STATEMENT

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Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:100.1

§100.1 OBSTRUCTING PUBLIC PASSAGES

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation, maintenance, repair, replacement or other work, in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, §1:

Emergency. Effective June 22, 1960.

Statutes Involved

LOUISIANA STATUTES ANNOTATED—R. S. 14:103.1

§103.1 DISTURBING THE PEACE

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, §1.

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

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REASONS FOR JUDGMENT

By the Court:

Before rendering a verdict, I want to caution the members present in court that I expect complete orderliness to be carried out just as it has been while arguments of counsel were going on and just like it has been throughout this entire trial.

First of all, the Court would like to thank both counsel for their respect to the Court and toward each other. The Court takes cognizance of the fact that during a heated trial sometimes both witnesses and counsel and the Court have heated exchanges, and I think that in a case of the character of this case involving demonstrators or rather the leader of a demonstration protesting segregation in this community, it is particularly admirable. It is admirable because, as counsel pointed out in argument, we have lived here peacefully in this community under a system of segregation from time immemorial and then all of a sudden in one day we have a protest of 1,500 people strong in the City of Baton Rouge and against what has been a custom for so long.

I want to dictate into the record exactly all of my reasons for judgment because much of the evidence adduced by both the prosecution and by the defense was based on hearsay, but I, as the judge of this court, am able to

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discriminate as to what is hearsay and what is not hearsay and what, in my opinion, is valid evidence.

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

With regard to the charge in 42,199, the Court finds B. Elton Cox not guilty. (I promise you, if I hear any further demonstration, I will empty the courtroom.) I find B. Elton Cox not guilty because he is charged under our attempt statute which is 14:26, and I cannot find him guilty of this charge because it is my opinion that the law of this state is that there must be some overt act perpetrated in violation of the statute which he is charged with, namely, 14:100.1 and 14:100.3, and the only evidence to prove this was that the defendant told the demonstrators to go down to the lunch counter and stay there. Our law, however, I think is that there must have been some overt act on the part of those with whom he was in conspiracy to violate that law, and I think probably had it not been for the police breaking up the demonstration that he would have been found guilty of this charge. I do think that the police broke it up before any one of them could make one move in that direction.

Now, with regard to the charge that is contained in bill No. 42,200. In bill No. 42,200 he is charged:

> "... in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge thereby impeding, hindering and restraining passage thereon."

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This Court takes cognizance of the fact that there has been testimony of competent witnesses from our police force who have had experience in estimating crowds; I have seen the pictures taken by Mr. Bob Durham which reflect to me that the sidewalk was effectively blocked. To place

some 1,500 people—The evidence was that the people did not block the service station area which is shown on a map of E. R. Nilson Map Service, but the testimony of both the police and disinterested witnesses not in anywise connected with law enforcement as well as the photographs taken by the photographer in the news film show that in the area ten feet wide according to this map and some 256 feet long that there were contained by the minimum estimate some 1,500 people; and if 1,500 people can congregate in 256 feet without blocking it, then the Court would have to be blind to physical facts. So, for that reason, as a consequence of what I saw on the film and from what I heard, I say and hold that this sidewalk on the west side of the Courthouse was obstructed for the convenient and normal use as a public sidewalk in the City of Baton Rouge and that it did impede and hinder and restrain passage thereon in the direct words of the statute that this bill of information which I read from tracks the statute. I find the defendant guilty of that charge.

With regard to No. 42,202 wherein he is charged with violating R. S. 14:103.1, R. S. 14:103.1 says that:
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> "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of peace may be occasioned thereby: (1) crowds or congregates with others . . . upon a public sidewalk, (and, of course, I have omitted the parts of the statute which are not pertinent) or any other public place or building (which is what he is charged with in the bill of information) . . . and who fails or

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

> refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the State of Louisiana . . ."

commits the crime of disturbing the peace. With regard to this statute, an attack has been made on this statute on the grounds that it is unconstitutional because it seeks to prohibit or punish the defendant by virtue of a criminal statute when he has a right as a citizen to peacefully protest against the segregation laws of the State of Louisiana or to protest against racial segregation and discrimination.

First of all, let me say that this Court respects the right of freedom of speech. It respects the right to picket, but even the right to picket and the right of freedom of speech is subject to limitation. Restrictions have been placed on (544)

the right to picket by the Federal Government and elsewhere under our state law involving labor activities with regard to their right to picket. In any event, picketing is said to be lawful when it is peaceful because it represents freedom of speech. Now, the right to protest is lawful, and the right to protest is lawful if it is conducted in a lawful manner. Our courts have held that picketing is uniawful when it is mass picketing, and if this protesting is a form of freedom of speech, I say it is unlawful when it is done en masse by some 1,500 people of the colored race parading on the streets of Baton Rouge and congregating on the sidewalk in violation of this statute.

Opinion of Hon. Fred A. Blanche, Judge of the Nineteenth Judicial District of East Baton Rouge, Louisiana

If this statute is a "segregation statute," it should be one of the segregation statutes that should be upheld by every court in this land. It should be upheld because it undertakes to understand the mood and the nature of our people, both colored and white. It recognizes, as this Court recognizes, that in the City of Baton Rouge there is racial tension. It recognizes, as our legislators must have recognized, that there is racial tension within the State of Louisiana; and the intent of the statute is to give the police the power to punish or disband or break up mass demonstrations, especially where they might involve racial overtones. It doesn't take a smart judge or it doesn't take any evidence to be presented to this Court to know that since (545)
the advent or since the decision of the United States Supreme Court (I think the case was Brown v. Topeka), that racial tension has mounted in the south, and understandably so, because after living under that system for hundreds and hundreds of years the change didn't just occur overnight. They recognize the basic human instinct that there would be resentment toward integration in the South, and I think our Legislature wisely took steps to have a statute on the books that would give law enforcement authorities the power to make it unlawful for anyone to demonstrate in such a manner so as to effectively block the sidewalk, which was done in this case. It should be inherently dangerous and a breach of the peace, recognizing racial tension as we have it in the south. It must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the

predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carrying lines such as "black and white together" and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served. That has to be an inherent breach of the peace, and our statute 14:103.1 has made it so.

Opinion of the Supreme Court of Louisiana

(1)

SUPREME COURT OF LOUISIANA

No. 46,395

STATE OF LOUISIANA

versus

B. ELTON COX

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
HONORABLE FRED A. BLANCHE, JR., JUDGE

No. 46,396

STATE OF LOUISIANA

versus

B. ELTON COX

IN RE: B. ELTON COX APPLYING FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION TO THE NINETEENTH JUDICIAL DISTRICT COULT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

SUMMERS, Justice.

In these consolidated cases[1] defendant, B. Elton Cox, was charged by the district attorney of East Baton Rouge

[1] There were four bills of information filed against the accused that were consolidated for trial below. On one charge involving criminal conspiracy the accused was acquitted; another charge of obstructing justice is on appeal in this court and is separately docketed; the remaining two of the four charges are the subject of this opinion.

Parish with obstructing public passages as defined and prohibited by R. S. 14:100.1. He was convicted, sentenced (2)
to pay a fine of $500 and to be imprisoned in the parish jail for a period of five months, and, in default of the payment of the fine, to be imprisoned an additional five months. An appeal was taken in this case and is docketed in this court under Number 46,395.

By separate bill of information Cox was charged with disturbing the peace as defined and prohibited by R. S. 14:103.1. He was convicted, sentenced to pay a fine of $200 and to imprisonment in the parish jail for a period of four months, and, in default of the payment of the fine, to be confined in the parish jail for four months. The accused having no right of appeal in this latter case, made application to this court for writ of certiorari, mandamus and prohibition which we granted under our supervisory powers to review the correctness of certain actions below.[2]

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[2] In both of these cases the accused was incarcerated in the parish prison pursuant to the sentences which were decreed to run consecutively. But, originally, because of the trial court's failure to allow proper delay after verdict and before sentence as required by R. S. 15:521 we granted writs of habeas corpus in both of these cases. In our review of the trial court's action (See State v. Clemmons, 243 La. 264, 142 So. 2d 794 (1962)) the writs were made peremptory, the sentences were annulled and set aside and the accused was ordered released on bail until such time as legal sentences were imposed and the accused was afforded an opportunity to take the procedural steps necessary to bring the matter before this court either on appeal or by writ application.

When the cases were again resumed below, the accused filed certain motions, perfected bills of exceptions and, in due time, was again sentenced as outlined in the body of this opinion.

The bill of information in No. 46,395 charges that defendant "did violate the provisions of R. S. 14:100.1 in that he did wilfully obstruct the free, convenient and normal use of a public sidewalk within the City of Baton Rouge, (3)
thereby impeding, hindering and restraining passage thereon."

The pertinent parts of the statute relied upon by the State provide:

> "No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions. * * *"
> R. S. 14:100.1

The bill of information in No. 46,396 charges that defendant "violated R. S. 14:103.1, * * * in that he did under circumstances such that a breach of the peace could be occasioned congregate with others in and upon a public street and upon public sidewalks in front of the Courthouse

in the Parish of East Baton Rouge, a public building, and in and around certain entrances of places of business and failed and refused to disperse and move on when ordered (4)
to do so by the Sheriff of East Baton Rouge, a person duly authorized to enforce the laws of this State."

The pertinent portion of the statute upon which this charge is based provides:

> "A. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an

association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so

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to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person * * * shall be guilty of disturbing the peace. * * *."

The defendant filed motions to quash and motions for bills of particulars to each of these bills of information prior to trial. These motions were overruled and the cases proceeded to trial, where these facts were established.

On the morning of December 15, 1961, the defendant, Cox, as the unquestioned leader, with a crowd of Negroes variously estimated at 1,500 to 3,800 (we think 2,000 persons is a fair conclusion to be derived from the evidence) assembled in the heart of Baton Rouge in the vicinity of the Old State Capitol Building, a short distance from the parish courthouse. Shortly before noon, Cox led these demonstrators in an orderly fashion to the vicinity of the parish courthouse, where the sheriff, chief of police and a substantial contingent of approximately eighty law enforcement officials had gathered in preparation for the march upon the courthouse. Twenty-three Negros had been arrested the day before for demonstrations in Baton Rouge and they were at that time imprisoned in the parish jail located in the upper floor of the courthouse building.

Arriving near the courthouse in the vanguard of the marchers, Cox was confronted by the sheriff and chief of

police and was asked what his intentions were. He announced to them that the marchers were demonstrating (6)
against segregation and their activities would be confined to a few songs, a speech, and peaceful demonstrations, the whole of which would consume only a few minutes. The sheriff then advised Cox to confine his demonstration to the time mentioned and no more.

The marchers then occupied the sidewalk across the street from the western entrance of the courthouse. The testimony and motion pictures in evidence unmistakably establish the fact that the marchers completely occupied the entire sidewalk for the greatest portion of a block across from the courthouse in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked, their occupants being unable to enter or leave. In the words of one witness the demonstrators were "tightly packed" along most of the sidewalk. Unmistakably, too, these activities resulted in an obstruction of the street separating the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to reroute traffic away from that street. Meanwhile, several hundred white persons had gathered in front of the courthouse across the street from the demonstrators.

There were silent prayers and a display of signs, which the demonstrators had kept hidden in their clothing. These signs being the identical ones used by the demonstrators who had been arrested the day before. All of these activities took place under Cox's command and according to

instructions he issued during each phrase of the demonstration.

Cox then made a speech which was in effect "a protest against the illegal arrest of some of their members." He admonished the multitude of demonstrators to remain (7)
peaceful and generally built them up emotionally for further sit-in demonstrations which he instructed them to conduct at lunch counters in the business district of the city upon leaving the scene.

The crowd then sang songs, answered by the prisoners in the jailhouse, and this in turn evoked loud and frenzied outbursts and "wild yells" from the demonstrators assembled on the sidewalks.

Whereupon "grumbling" was heard among the white people, a feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." Several witnesses testified that in their lifetime no demonstration of this nature or scope had ever taken place in Baton Rouge. As one witness expressed it the crowd was "rumbling." In the large crowd the "tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before.

At this time the prisoners in jail were "hollering", "screaming", "beating on bars", "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was imminent, and fearing the crowd would get out of hand instructed Cox by means of a loudspeaker so that all present could hear to

"move on" and "break it up", that he had had his time. Cox then instructed the demonstrators by saying "Don't move" and by his actions and demeanor defied the sheriff's orders. The demonstrators and Cox stood immobile. They refused to move on.

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The police then dispersed the crowd with tear gas and Cox was arrested the next day.

Four causes are assigned by the accused for setting aside the conviction below.

First, it is asserted that the specific laws under which he was charged, tried and convicted (R. S. 14:100.1 and R. S. 14:103.1) are unconstitutional in their application, for the conviction thereunder infringes upon the defendant's right of free speech protected by the First Amendment of the United States Constitution which the States cannot deny its citizens because of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

Second, the claim is made that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

Third, it is contended that Cox's trial and conviction were violative of the Fourteenth Amendment for there was no evidence tending to prove the crime charged.

Fourth, it is contended that the segregated conditions in the courtroom during the trial denied Cox a fair trial in violation of the Sixth and Fourteenth Amendments.

Defendant's first contention is based upon the proposition that the statutes (R. S. 14:100.1 and R. S. 14:103.1)

prohibiting the obstructing of public passage and disturbing the peace, under which defendant was convicted, are unconstitutional in their application in this case. The defendant asserts that if those statutes are construed to (9)

convict defendant for his action in obstructing the sidewalks while demonstrating against segregation it deprives him of the freedom of assembly and freedom of speech and the right to peacefully picket guaranteed by the First Amendment to the Constitution of the United States. Under the due process and equal protection of the laws clause of the Fourteenth Amendment, it is contended, the State of Louisiana must afford the right of freedom of speech to this defendant. Defendant relies upon the case of Thornhill v. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940), holding that peaceful picketing was within the liberties protected by the First and Fourteenth Amendments. The argument is advanced that such interest as the State of Louisiana has in protecting the public peace is not substantial enough to justify this prosecution which has the effect of denying to the accused the guarantees of freedom of speech and expression.

Thus we understand the contention to be that even though the statute might be constitutionally enforced under other circumstances, it cannot be invoked to punish this demonstration which the defendant asserts is no less an expression than is speech against segregation; and this freedom of expression, like freedom of speech, is protected by the First Amendment. Citing concurring opinion of Mr. Justice Harlan in Garner v. Louisiana, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

The United States Supreme Court has long ago announced that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. Edwards v. South Carolina, 372 U. S. 229, 83 Sup. (10)
Ct. —, 9 L. Ed. 2d 697 (1963); Thornhill v. Alabama, supra; Cantwell v. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213 (1940); DeJonge v. Oregon, 299 U. S. 353, 57 Sup. Ct. 277, 81 L. Ed. 270 (1937); Stromberg v. California, 283 U. S. 359, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1931); Whitney v. California, 274 U. S. 357, 47 Sup. Ct. 641, 71 L. Ed. 1095 (1927); Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

But the right of freedom of speech is not absolute and a State may by general and non-discriminatory legislation, under its police power, regulate the exercise of that freedom. Cantwell v. Connecticut, supra.

Our inquiry, then, must be directed to the regulation of the constitutional guarantee and a careful consideration of whether that regulation is within the allowable area of state control. And so in this inquiry we must look to the conduct to be limited or proscribed.

The statutes in question do not come within the objection that they punish conduct which is so generalized as to be "not susceptible of exact definition" as was the case in Edwards v. South Carolina, supra. To the contrary, in each instance the proscribed conduct is precisely and narrowly defined for it is to "obstruct • • • any public sidewalk • • • by impeding, hindering, stifling, retarding or restraining traffic or passage thereon" in one instance which is proscribed and it is those who "under circumstances such that a breach of the peace may be occasioned

thereby: (1) crowds or congregates with others * * * in or upon * * * a public sidewalk" who are guilty of disturbing (11)
the peace in the other instance. See also Garner v. Louisiana, 368 U. S. 147, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961), Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1932).

Laws having the character of those under attack have been before the courts of last report in other States, and have been upheld as reasonable regulations in the exercise of police power. City of Tacoma v. Roe, 190 Wash. 444, 68 P. 2d 1028 (1937); State v. Sugarman, 126 Minn. 477, 148 N. W. 466, 52 L. R. A. (N. S.) 999 (1914); Benson v. City of Norfolk, 163 Va. 1037, 177 S. E. 222 (1934).

In the statutes under consideration there is no discrimination, but where labor picketing is concerned a clearly defined exclusion recognized in Thornhill v. Alabama, supra, is set forth.

In Edwards v. South Carolina, supra, the court announced that no infringement upon constitutional guarantees would be involved "If, for example, petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public * * *" And this is the precise nature of the regulation which these contested statutes invoke. The reasons which support such enactments are obvious and have been approved on many occasions. They are that:

> "Municipal authorities, as trustees of the public, have the duty to keep their communities' streets open and available for movement of people and

property, the primary purpose to which streets are dedicated. So long as legislation to this end does

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not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." Schneider v. State, 308 U. S. 147, 160, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939).

And on this authority, and others, it is manifest that the right to freely speak against segregation, if that was the true motive of the demonstrators in the case at bar, bears no relation to facts involving two thousand persons marching against the halls of justice and obstructing the public sidewalks there in such a manner that a violation of the

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statute proscribing that conduct is manifest. These demonstrators, like other citizens, must confine their exercise of

constitutional freedoms within lawfully regulated limits of those freedoms.

In support of the second grounds for setting aside this conviction, it is asserted that these laws and the bills of information are too vague and general and hence violate the due process and equal protection clauses of the Fourteenth Amendment.

R. S. 14:103.1 is said to be ambiguous for it is not clear whether the prosecution must show an actual disturbance or only circumstances such that a disturbance may be occasioned. In either event, however, we think there is no ambiguity in that language of the statute for to "disturb the peace" in Louisiana means "• • • to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." Town of Ponchatoula v. Bates, 173 La. 824, 138 So. 851 (1932). To "breach the peace" has the identical meaning in our view and the statute so declares, for it provides that "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach may be occasioned thereby" commits certain acts "shall be guilty of disturbing the peace." Because the words of the statute have a fixed, definite and commonly understood meaning and a meaning ascribed to them by this court, they are not ambiguous nor is it objectionable that the statute seeks to proscribe conduct which will result in a disturbance of the peace. The statute may lawfully have the prevention of a disturbance as its object as well as punishing

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an actual disturbance. Therefore the accused had adequate notice of the proscribed conduct. Garner v. State of Louisiana, 368 U. S. 157, 82 Sup. Ct. 248, 7 L. Ed. 2d 207 (1961).

With respect to R. S. 14:100.1 the contention is made that the bill of information charging a violation of that statute is fatally defective because it fails to inform defendant of the nature and the cause of the accusation against him, though it is conceded that the statute may be sufficient to describe or legally characterize the offense. U. S. Const. amend. VI; La. Const. of 1921 art, I, §10; R. S. 15:2, R. S. 15:5 and R. S. 15:227.

The Louisiana Constitution, like the United States Constitution, provides that in all criminal prosecutions the accused has a right to be informed of the nature and cause of the accusation.

The argument is advanced here that one cannot be charged with obstruction "of a public sidewalk within the City of Baton Rouge . . ." One must be charged with obstruction of a particular sidewalk, i.e., ". . . that sidewalk on the West side of St. Louis Street, in the City of Baton Rouge, Louisiana, identified by municipal number 200, bounded on the North by . . . and bounded on the south by . . ." But we cannot agree with the contention; the quoted language of the bill of particulars in the beginning of this opinion refers to the sidewalk in "front of the Courthouse" which, together with the date of the occurrence, is definite and clear and furnishes the requisite information to satisfy the constitutional test, which is threefold:

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First, the statement of the accusation should inform the accused of the charges that will be brought against him at the trial in order that he may properly defend himself. Second, the trial judge should be informed by the indictment of what the case involves, so that, as he presides and is called upon to make rulings, he may do so intelligently.

Third, the indictment should form a record from which it can be clearly determined whether or not a subsequent proceeding is barred by the former adjudication.

When the accusation fulfills these purposes, it satisfies the constitutional mandate that the accused must be informed of the nature and cause of the accusation. State v. Scheler, 243 La. 443, 144 So. 2d 389 (1962).

The third contention that there was no evidence tending to prove the crime charged is without merit.

This court is limited in the scope of its review in criminal matters by Article VII, Section 10 of the Constitution of this State "to questions of law only." Although it is recognized in our jurisprudence that a proper interpretation of the foregoing constitutional provision permits a complaint that a conviction based upon "no evidence at all" presents the question of law whether it be lawful to convict an accused without any proof whatsoever as to his guilt, it is firmly established that it is only when there is no evidence at all upon some essential element of the crime charged that the court may set aside a verdict. But, where there is *some* evidence to sustain the conviction, *no matter how little,* this court cannot pass upon the sufficiency thereof. That comes within the exclusive province of the trial judge or jury. State v. Copling, 242 La. 199, 135 So. 2d 271 (1961). (16)

Undoubtedly, from the facts recited, there is some evidence. In our view there is ample evidence to sustain this conviction.

The final grounds relied upon to reverse this conviction is that racial segregation existed in the court where defend-

ant was tried and convicted and this segregation denied him a fair trial in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The record undoubtedly establishes that racial segregation existed in the courtroom as it had for many years.

On April 29, 1963, the United States Supreme Court held that "State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of its law." Johnson v. Virginia 31 U. S. L. Week 3353 (U. S. April 29, 1963). But in the Johnson case the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case before us, there is no charge against the defendant for having violated the court-imposed seating arrangement and none of the parties upon whom the segregation was imposed are before this court in this case. Hence the Johnson case is not authority for reversing this conviction. It has not been made to appear that the segregation resulted in a miscarriage of justice to this defendant. R. S. 15:557. If it were otherwise, it would result that every Negro convicted in that court in the past would be entitled to have his conviction set aside.

For the reasons assigned the conviction and sentence are affirmed.

REHEARING REFUSED
OCT 9 1963

Opinion of the Supreme Court of Louisiana

STATE OF LOUISIANA VS. B. ELTON COX—No. 46,395.

McCALEB, J., Dissenting.

The ruling herein that the bill of information is sufficient to apprise the accused of the nature and cause of the accusation against him is in conflict with our recent decision in State vs. Smith, 243 La. 656, 146 So. (2d) 152, handed down on November 5, 1962.

In the Smith case the defendants were charged in a bill of information containing two counts with violating (1) R. S. 14:100.1 (obstructing public passages) and (2) R. S. 14:103.1 (disturbing the peace) under allegations similar to those made in the separate bills of information which have been upheld in the instant matter. The Court, after setting forth the settled jurisprudence of this State to the effect that it is not a sufficient compliance with the constitutional mandate of Section 10 of Article 1 of the State Constitution (that the accused shall be informed of the nature and cause of the accusation against him) for the bill of information to be couched in the language of the statute when the statutory words do not, themselves, set forth the elements necessary to constitute the offense intended to be punished (see, among other cases, State vs. Verdin, 192 La. 275, 187 So. 666; State vs. Varnado, 208 La. 319, 23 So. (2d) 106 and State vs. Blanchard, 226 La. 1082, 78 So. (2d) 181), quashed the bill of information, holding that the provisions of R. S. 14:100.1 and 14:103.1 were not specific enough to support a charge drawn in their language and that allegations of the particular facts were required in order to comply with the Constitution.

The motion to quash should be sustained.

REHEARING REFUSED
Oct 9th 1963

(16)

Notice of Motion to Quash

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

And now into this Honorable Court, through his undersigned counsels, comes B. ELTON COX, the defendant in the above entitled and numbered cause, moves to quash the Bill of Information for the following reasons, to-wit:

-1-

That defendant denies that he violated the provision of LSA-R. S. 14:100.1 as charged in the Bill of Information. However, defendant alleges and avers that on the 15th day of December 1961, in protest of racial segregation, defendant, a citizen of the United States, together with others, did in exercise of his rights accorded defendant by and under the First Amendment to the Constitution of the United States of America, peaceably assemble on a public sidewalk within the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

-2-

That while the arrest and charge were for "Obstructing Public Passages", there was no commission of such crime

(17)

or offense, except for the activities in which the defendant engaged to protest racial segregation, and that the use of the criminal process in such a situation denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed defendant, a citizen of the United

States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-3-

That LSA-R. S. 14:100.1 is unconstitutional on its face, repugnant to the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America, in that, it expressly extends to a bona fide legitimate labor organization the rights accorded and guaranteed citizens of the United States by the First Amendment to the Constitution of the United States of America, while denying and depriving defendant, a member of the Negro race, the same rights.

-4-

That LSA-R. S. 14:100.1 is unconstitutional on its face, in that it denies and deprives defendant, a citizen of the United States of America, of due process and equal protection of the laws, guaranteed the defendant by the Fourteenth Amendment to the Constitution of the United States of America.

-5-

That if said Statute, LSA-R. S. 14:100.1, as amended, does embrace within its terms and meanings, that the defendant, by protesting racial segregation "obstructs public passages", then and in that event said Statute, LSA-R. S. 14:100.1 is unconstitutional, in that it deprives your defendant of his rights, privileges, immunities and/or liberties, without due process of law and denies him the equal pro-

tection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-6-

That the Bill of Information is insufficient to charge an (18)
offense or crime under LSA-R. S. 14:100.1, except violating the rights, privileges, immunities and liberties accorded and guaranteed the defendant, a citizen of the United States, by and under the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, your defendant, B. ELTON COX, prays that this Motion to Quash be maintained and that the said Bill of Information as to him, and as far as he is concerned be declared null and void and that he be discharged therefrom.

Attorney for Defendant:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

(Signed) BY: JOHNNIE A. JONES

(42)

Opinion Overruling Motion

That on a subsequent day of Court a hearing was had contradictorily with the state on the said motions to Quash and that the court overruled and denied the said motions to Quash to which your defendant then and there objected and reserved a bill of exceptions to the information, the motion to Quash, the States answer to the motion to quash and to the Courts ruling denying the said Motion to Quash, and now your defendant perfects this formal bill of exceptions making a part of same the said information, the motion to Quash, the States answer to the motion to Quash, any evidence offered or testimony heard on the motion to Quash, the Courts ruling on same, and the entire record in these proceedings, and first submitting this their formal bill of exceptions to the District Attorney, now tenders the same to the court and prays that the same be signed and sealed by the judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

(30)

Motion in Arrest of Judgment

NOW INTO COURT, after verdict against B. ELTON COX, and before sentence the said B. ELTON COX, through undersigned counsel, and moves the Court here to Arrest Judgment herein and not to pronounce the same because of manifest errors in the record appearing to-wit:

-1-

That at the beginning of the trial (Transcript Page 4) attorney Johnny Jones moved *for the record to show* that Murphy Bell, Attorney, was associated on the case with him.

That the court ordered a minute entry to that effect.

That Attorney Jones also asked for the same record to show that the courtroom was segregated to which request the District Attorney objected and to which the court replied:

> "Also let the record show that it has been the practice and custom in the East Baton Rouge Parish Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white *and let the record especially show* that the judge in this case ordered that half of the seats that were formerly reserved and available for white people are now being occupied and filled by colored people".

(31)

That on Wednesday, January 31, 1962 (transcript page 278) Johnny Jones renewed his objection to the segregated courtroom, in the following words:

Motion in Arrest of Judgment

> "Your Honor, I want to renew our objection about court being segregated and I want to reserve a formal bill".

To which the court replied:

> "Well, I just don't think it makes any difference I don't know if he has got any right to a bill on it or not, but I will let him perfect on it, if he wants to"

Then after some discourse between Mr. Pitcher and Mr. Jones the court said:

> "Let it stand as it is".

The above statements are held by counsel to constitute a correct reserving of an objection and the reserving of a Bill of Exceptions to the overruling of the Motion to Desegregate the Courtroom. If not so deemed, then it is our alternative position that the remarks of the court constitutes a part of the record which may properly be presented in review for error in a Motion in Arrest of Judgment.

Thus the record shows on its face that defendant was deprived of rights guaranteed him under the equal protection of the laws and due process of law clauses of the Fourteenth Amendment to the Constitution of the United States.

-2-

That the Bills of Information are insufficient to charge a crime under L. S. A.-R. S. 14:103.1 and 14:100.1.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed

to him under the first amendment to the Constitution of the United States.

(32)

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

Motion in Arrest of Judgment

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendants rights under the Due Process Clause of the Fourteenth Amendment.

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that (33)
it is constitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating" . . . under circumstances such that a breach of the peace *may* be occasioned thereby.

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a Motion in Arrest of Judgment should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades St., N. O. La.
(Signed) BY NILS R. DOUGLAS
MURPHY W. BELL
971 South 13th St., B. R., La.

OF COUNSEL:
CARL RACHLIN
280 Broadway
New York, New York

(56)

Opinion on Motion in Arrest of Judgment

The Court after hearing the said Motion in Arrest of Judgment of the defendants, denied and overruled the same, and to such action of the Court, counsel for the defendant then and there objected and reserved a formal bill of exceptions, and now counsel perfects this his formal bill of exceptions to the overruling and denying of the said Motion in Arrest of Judgment and makes a part hereof, the bill of information, the Motion to Quash, any evidence or testimony heard or offered on the trial of these cases on the merits, the Motion in Arrest of Judgment, the Motion For A New Trial, the Courts ruling on the Motion In Arrest Of Judgment, the Courts ruling on the Motion For a New Trial and the entire record in these proceedings and first submitting this his bill of exceptions to the District Attorney, now tenders the same to the court and prays the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

(35)

Motion for New Trial

NOW INTO COURT, through undersigned counsel comes B. ELTON COX, the defendant in the above entitled and numbered cause and moves the court that the verdict rendered herein be set aside and a New Trial ordered, for the following reasons:

-1-

That the Bills of Information are insufficient to charge a crime under L. S. A. R. S. 14:103.1 and 14:100.1.

-2-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the first amendment to the Constitution of the United States.

-3-

That the convictions of defendant for violation of L. S. A.-R. S. 14:103.1 paragraph A subpart 1 and for violation of L. S. A.-R. S. 14:100.1 denied defendant rights guaranteed to him under the Sixth Amendment to the Constitution of the United States.

-4-

That the courts overruling of defendants objection to the segregated seating in the courtroom to which ruling de-

(36)

fendant reserved a formal Bill of Exceptions was error and prejudicial to the defendant in that it denied him the right to a fair trial guaranteed to him by Article I Section 6 of the Constitution of the State of Louisiana. Said error further denied defendant the equal protection of the laws

and due process of law guaranteed to him by the first section of the Fourteenth Amendment to the Constitution of the United States.

-5-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the Fourteenth Amendment of the Constitution of the United States in that they were enacted for the specific purpose and intent to implement and further the states policy of enforced segregation of races.

-6-

That the statutes under which the defendant was convicted are unconstitutional and in contravention of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that they were arbitrarily, capriciously and discriminately enforced against persons peacefully, exercising their rights of freedom of speech in protest against racial segregation.

-7-

That the statutes under which defendant is convicted and the Bills of Information filed thereunder are unconstitutional for want of adequate notice, vagueness and uncertainty therefore said statutes could not constitutionally be construed to cover the activities sought to be punished by the Louisiana Courts.

-8-

That the judgments are contrary to the law and the evidence in that there is no evidence to support a finding of guilt under either statute thus violating defendant's rights under the Due Process Clause of the Fourteenth Amendment.

(37)

-9-

That the judgments are unconstitutional in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States in that it is consitutionally impossible to charge and convict a defendant for disturbing the peace when the body of the statute prohibits crowding or congregating ". . . under circumstances such that a breach of the peace *may* be occasioned thereby".

WHEREFORE, your mover prays that, a rule nisi issue out of this Honorable Court directed to Honorable Sargent Pitcher, Jr., District Attorney ordering him to show cause, if any he has, why a New Trial should not be granted in these proceedings.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans 13, Louisiana
(Signed) BY: NILS R. DOUGLAS
MURPHY W. BELL
971 South 13th St., Baton Rouge, La.

OF COUNSEL:
CARL RACHLIN
280 Broadway
New York, New York

(48)

Opinion on Motion for New Trial

The Court, after hearing the said Motion of the defendant for a New Trial, denied and overruled the same, and to such action of the court, counsel for the defendant then and there objected and reserved a formal bill of exceptions and counsel now perfects this his formal bill of exceptions to the overruling of the Motion for a New Trial and makes a part hereof the bill of information, the motion to quash, the Courts ruling overruling the motion to quash and any evidence offered or testimony heard on the trial of the cases on the merits, the motion for a New Trial, the courts ruling on the motion for a New Trial, and the entire record in these proceedings, and first submitting this his bill of exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of this Court, pursuant to the statute in such case made and provided, which is done accordingly this 10th day of October 1962.

(Signed) Fred A. Blanche, Jr.
JUDGE

Excerpts From Transcript of Trial

(4)

Mr. Jones: Your Honor, I would like to move to associate attorney Murphy Bell on the case with me.

The Court: All right.

Mr. Jones: I would like for the record to show that he is now being associated on the case.

The Court: Show a minute entry to that effect.

Mr. Pitcher: No objection.

Mr. Jones: I would also like for the record to show that

(5)

this case is one where the defendant is being charged for the protest of racial segregation and that within the Courthouse itself that the defendant is being tried in that racial segregation is being practiced and that there are interested parties, citizens on the outside of court waiting—

Mr. Pitcher: I object to the remarks of counsel—

Mr, Jones: —who are interested in the case and that there are seats vacant in the court which are being reserved for the whites and that the Negro citizens who are interested in the case and the outcome of the case are not permitted to utilize these seats. I would like for that to be made a part of the record.

The Court: Also, let the record show that it has been the practice and custom in the East Baton Rouge Parish

(6)

Courthouse for many, many years, and in the purpose of maintaining order in the courtroom, separate portions are placed in the courtroom for both colored and white, and let the record especially show that the judge in this case ordered that half of the seats that were formerly reserved

and available for white people are now being occupied and filled by colored people.

Mr. Pitcher: If Your Honor Please, while Your Honor is well aware of what is going on, I am sure that the Supreme Court of the United States will not be, and for that reason, I ask that Your Honor appoint a Deputy Sheriff to personally count the number of people in this room to be able to testify as to the number of people present in (7)
court and the seats available and the number of white people present. I think the State is entitled to that.

The Court: All right.

(A Deputy Sheriff was so appointed by the Court at this time and ordered to count the people in the courtroom while the proceedings were going on.)

Mr. Jones: If the count is to be made, Your Honor, we would also like to make a count of those who are waiting on the outside.

The Court: Count them, too.

Mr. Jones: And count the number of seats that are still available.

The Court: All right.

(340)

Excerpts From Transcript of Trial

Testimony of Thomas Terrell Edwards, Captain in Charge of Jail, and Herman Thompson

By the Court;

Q. In response to a request of the Court did you count the number of colored people sitting in the courtroom at the time court opened on, what day was that—Monday? A. Day before yesterday.

Mr. Jones: Monday, the twenty-ninth.

Q. Did you do that? A. Yes, sir, I did.

Q. And how many people were sitting in here? A. There was 127 colored and 8 whites in the courtroom behind the rail.

Q. Behind the rail. A. At the first count I made. Now, I made two, If Your Honor remembers. The second count there was the same number of colored, 127, and there were 14 whites.

Q. How much later was that? A. Oh, about two hours, if I recall correctly.

Q. When court opened there were 127 colored and 8

(341)

whites, is that correct? A. Yes, sir.

Q. And approximately how many seats were reserved by the Court for whites? A. Forty-two.

Q. How many colored were on the outside? A. Eighty-eight.

Q. Eighty-eight? A. Yes, sir.

By Mr. Jones:

Q. Would they be waiting to get in, sir? A. None of them indicated that they wanted to get in. They were standing in the hall is all I could tell.

By the Court:

Q. Was that at the same time, because it looked like to me that there were more than eight-eight. A. At the time I counted, sir, there were just eighty-eight. Now, I was told—

Q. How much later was that than when I first told you—when we opened Court, how much longer after that did you go out and count? A. Well, I made the second count in the courtroom and then I went outside and made a count, and I believe it was approximately two hours between the two counts. I am guessing at that time. At the time I really don't recall, sir.

(342)

Q. At the time that the court was opened, wasn't there more out there in the hall than there were at the time you took the count? A. I don't know, sir.

Q. I was told there were. A. I was told that at several times in the afternoon there 200 or 250, but I didn't see them. I didn't go out there.

Q. Do you know anyone who could make an estimate to that effect among the officers? A. Captain Henderson or Captain Thompson could.

The Court: All right, is that all?

By Mr. Jones:

Q. Did you reserve any seats in the courtroom for the white people? A. I didn't reserve any seats for anyone.

Q. Was there any seats in the courtroom reserved for the whites then? A. No, sir, His Honor—

The Court: I will answer that from the bench. I reserved one-half of what was formerly the white

(343)

section for white people and I gave the other half of it to the colored people.

WITNESS EXCUSED

The Court: Captain Thompson.

HERMAN A. THOMPSON, called as a witness by the Court, being first duly sworn, testified as follows:

Direct examination by the Court:

Q. How many colored people were out in the hall at the time court started on Monday? A. There were two hundred or better, Judge.

Q. Is that your estimate? A. Yes, sir, that was why we called the fire marshals.

Q. Could it have been as many as 250? A. It could very easily.

Q. Could it have been more than 250? A. They were solid from this courtroom door about four foot out from the door down to the Grand Jury room, and there were some of them sitting on benches down the hall.

Q. Did you clear a corridor between them for a passage-
(344)
way to the door here? A. We were having difficulty. That is why we called the fire marshals in order to enforce the fire laws.

Q. How long did a crowd of that size remain outside? A. I would say for at least two hours.

By Mr. Pitcher:

Q. Captain, at the time there were 250 people in the hall, was that the same time that Captain Edwards has said there were 127 in the courtroom? A. That is correct, sir.

Q. And there were only eight white people in it at that time? A. That is correct, sir.

Mr. Pitcher: That's all. Your witness.

A. (Directed to the Court) Do you want what you asked for yesterday?

By the Court:

Q. What is that? A. You asked how many vacant seats there were.

Q. What time was it? A. At 11:15 A. M. yesterday you asked me and there were twenty vacant seats and only five waiting outside, and out of the five we asked—one was Reverend Johnson and he said he didn't care to come in.